



BEFORE THE ARIZONA CORPORATION CC 0000093548

Arizona Corporation Commission

DOCKETED

FEB 24 2009

COMMISSIONERS

KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

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In the matter of:)
)
JAMES JONATHON FRASER BUCHANAN,)
)
CRD# 2452897 and LORI A. BUCHANAN,)
)
husband and wife,)
)
Respondents.)

DOCKET NO. S-20620A-08-0472

DECISION NO. 70751

**ORDER TO CEASE AND DESIST,
FOR RESTITUTION, FOR
ADMINISTRATIVE PENALTIES,
AND OF REVOCATION**

On September 11, 2008, the Securities Division ("Division") of the Arizona Corporation Commission ("Commission") filed a Notice of Opportunity for Hearing Regarding Proposed Order To Cease and Desist, Order for Restitution, for Administrative Penalties, of Revocation, and for Other Affirmative Action ("Notice") against Respondents JAMES JONATHON FRASER BUCHANAN ("Respondent") and JANE DOE BUCHANAN, husband and wife, alleging violations of the Arizona Securities Act (the "Securities Act"). The Notice specified that Respondents would be afforded an opportunity for an administrative hearing upon written request filed with the Commission's Docket Control within ten (10) days after receipt of the Notice, in accordance with A.A.C. R14-4-306(B).

Respondent was served pursuant to A.A.C. Rule R14-4-303(C), by certified mail/return receipt on September 22, 2008. On January 13, 2009, the Division filed a Notice amending the caption to name LORI A. BUCHANAN in the place of JANE DOE BUCHANAN as Respondent Spouse. Respondent Spouse was served by personal service on January 13, 2009 at her residence. Both Respondents failed to request an administrative hearing within 10 days after receipt of the Notice, pursuant to A.R.S. § 44-1972 and A.A.C. R14-4-306(B). Both Respondents failed to file an Answer within 30 days of service of the Notice, pursuant to A.A.C. R14-4-305.

I.**FINDINGS OF FACT**

1. BUCHANAN, CRD# 2452897, was at all pertinent times a resident of Chandler, Arizona, and a registered securities salesman in Arizona. BUCHANAN was affiliated with LPL Financial Corporation ("LPL") from June 1, 2006, until he was discharged on or around March 21, 2008. LPL reported on the Central Registration Depository ("CRD") of the Financial Industry Regulatory Authority, Inc. ("FINRA") that BUCHANAN's discharge was based upon the firm's review of "documents reflecting investments not held or offered by the firm," including "documents reflecting payments by individuals to Mr. BUCHANAN directly" and "documents reflecting purported investment statements not authorized or approved by the firm." LPL discharged BUCHANAN based upon the same transactions that are the subject of this action. Prior to his association with LPL, BUCHANAN was affiliated with American Express Financial Advisors, Inc. ("AEFA"), now known as Ameriprise Financial Services, Inc. ("Ameriprise"), from February 2, 1994, until he voluntarily terminated his association on January 23, 2006. BUCHANAN was at all pertinent times licensed with the Arizona Department of Insurance as a producer, authorized to sell accident/health and life insurance, and variable life/variable annuity products.

2. LORI A. BUCHANAN was at all relevant times the spouse of BUCHANAN; LORI A. BUCHANAN may be referred to as "Respondent Spouse." Respondent Spouse is joined in this action under A.R.S. § 44-2031(C) solely for purposes of determining the liability of the marital community.

3. At all times relevant, BUCHANAN was acting for his own benefit and for the benefit or in furtherance of BUCHANAN and Respondent Spouse's marital community.

4. Beginning as early as 2001, BUCHANAN, operating out of Chandler, Arizona, engaged in an elaborate fraudulent scheme to offer to sell various types of securities, including debentures, which he described as "debentures with conversion privileges" and "7% Certificates."

1 5. BUCHANAN told customers that they were investing in one or more coal
2 companies, including Hannah Energy, Inc. ("HEI") and Clean Coal Technologies, Inc. ("CCT"),
3 based in Florida.

4 6. BUCHANAN made various representations to customers to persuade them that the
5 securities he offered were safe from risk and profitable. These representations included statements
6 that the investments were secure; that the investors would receive needed monthly income in the
7 form of interest payments; and that the investments would not be influenced by fluctuations in the
8 market.

9 7. BUCHANAN distributed various documents to customers, including copies of
10 contracts entitled "Debenture Agreement with Conversion Privileges."

11 8. Some of BUCHANAN's customers, including elderly Arizona investors who had
12 long-term relationships with BUCHANAN as their financial planner, invested their life savings in
13 these debentures and certificates, believing BUCHANAN's reassurances that these investments
14 were safe and would provide needed income, and trusting BUCHANAN as their friend.

15 9. BUCHANAN falsely claimed that the certificates and debentures were sold through
16 his dealers.

17 10. BUCHANAN distributed fictitious documents to customers reflecting customers'
18 purported purchase of these securities through BUCHANAN's dealer, for example dealer
19 "Confirmation" forms reflecting purchases of "Investor Certificate 7%" or "HEI Debenture 10%,"
20 and fictitious dealer customer account statements reflecting purported accumulated earnings as
21 "interest payable."

22 11. These securities transactions were not effected through BUCHANAN's dealers, and
23 BUCHANAN's dealers did not authorize BUCHANAN to offer these securities.

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1 12. BUCHANAN persuaded customers of his dealers to sell other securities that they
2 owned, including bank certificates of deposit and mutual fund accounts, or to liquidate IRA
3 account investments to purchase the certificates and debentures.

4 13. BUCHANAN directed customers to give him personal checks payable to
5 BUCHANAN, which violated his dealers' rules prohibiting registered securities salesmen from
6 accepting direct payment of funds from customers for the purchase of securities.

7 14. In at least one instance, a customer questioned BUCHANAN regarding his authority
8 to accept direct payments of funds, and BUCHANAN told the customer to that her money was
9 secure if she made the payment to him as "CFP," which she did. BUCHANAN was not a certified
10 financial planner, and therefore, was not authorized to use the "CFP" designation.

11 15. BUCHANAN had some customers sign dealer forms entitled "Wired Funds
12 Authorization," in which BUCHANAN represented that he was transferring customer funds from
13 customers' brokerage accounts to brokerage accounts of the companies purportedly issuing the
14 securities, for example, "Clean Coal Technologies, Inc."

15 16. BUCHANAN told customers that they would receive official ownership documents
16 after their purchases. In some cases, customers did not receive official "certificates" of ownership,
17 but were not concerned after they started receiving monthly statements or interest payments from
18 BUCHANAN. Upon information and belief, BUCHANAN did not use the money obtained from
19 these customers to purchase securities in their names, but deposited their funds in his own bank
20 account and paid the "interest" payments to them out of his own account.

21 17. BUCHANAN effected securities transactions that were not recorded on the records
22 of the dealers with whom BUCHANAN was registered at the time of the transactions. This sales
23 practice is referred to as "selling away" and is prohibited conduct in the securities industry, and is
24 defined as a dishonest and unethical conduct under the Arizona Securities Act.

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1 18. On or about March 21, 2008, LPL discharged BUCHANAN after learning from the
2 Maricopa County Sheriff's Office that BUCHANAN was under criminal investigation for alleged
3 fraudulent conduct involving securities customers, relating to these purported securities
4 transactions.

5 19. After learning that LPL discharged BUCHANAN, some customers attempted to
6 verify their ownership of the securities, and learned that there was no record of any purchase of
7 securities in their names. These customers do not know where or how BUCHANAN used their
8 funds, which they paid to him for the purchase of debentures and certificates.

9 20. To date, investigation of BUCHANAN's unauthorized conduct has revealed at least
10 23 Arizona customers who paid over \$4,500,000.00 for certificates and debentures purportedly
11 sold through BUCHANAN's dealers, including a Tempe Church, which invested \$1,000,000.00 in
12 purported HEI certificates or debentures. Other customers who paid BUCHANAN funds for these
13 purported energy securities included members of BUCHANAN's Tempe Church, where
14 BUCHANAN served as a Board Member, and Mesa United Way employees, who met
15 BUCHANAN as early as 1997, when BUCHANAN worked for American Express and handled the
16 Mesa United Way Retirement Plans.

17 21. In connection with the offer or sale of securities within or from Arizona,
18 Respondents directly or indirectly: (i) employed a device, scheme, or artifice to defraud; (ii) made
19 untrue statements of material fact or omitted to state material facts that were necessary in order to
20 make the statements made not misleading in light of the circumstances under which they were
21 made; or (iii) engaged in transactions, practices, or courses of business that operated or would
22 operate as a fraud or deceit upon offerees and investors. BUCHANAN's conduct includes, but is
23 not limited to, the following:

24 a) Misrepresenting that securities transactions were effected through
25 BUCHANAN's dealers;

1 b) Failing to disclose that the securities were offered without knowledge or
2 authorization from BUCHANAN's dealers;

3 c) Distributing falsified brokerage statements and forms; and

4 d) Misrepresenting earnings on the securities investments.

5 **II.**

6 **CONCLUSIONS OF LAW**

7 1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona
8 Constitution and the Securities Act.

9 2. Respondent offered or sold securities within or from Arizona, within the meaning of
10 A.R.S. §§ 44-1801(15), 44-1801(21), and 44-1801(26).

11 3. Respondent violated A.R.S. § 44-1991 by offering or selling securities within or from
12 Arizona by (a) employing a device, scheme or artifice to defraud, (b) making untrue statements or
13 misleading omissions of material facts, and (c) engaging in transactions, practices or courses of
14 business which operate or would operate as a fraud or deceit.

15 4. Respondent's conduct is grounds for a cease and desist order pursuant to A.R.S. § 44-
16 2032 and 44-1962.

17 5. Respondent's conduct is a violation of A.R.S. § 44-1991 and grounds for a restitution
18 order pursuant to A.R.S. §§ 44-2032 and 44-1962.

19 6. Respondent's conduct is grounds for administrative penalties under A.R.S. §§ 44-2036
20 and 44-1962.

21 7. Respondent's conduct is grounds to revoke Respondent BUCHANAN's registration as
22 securities salesmen with the Commission pursuant to A.R.S. § 44-1962.

23 8. Respondent acted for the benefit of the marital community and, pursuant to A.R.S. §§ 25-
24 214 and 25-215, this order of restitution and administrative penalties is a debt of the community.

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III.

ORDER

THEREFORE, on the basis of the Findings of Fact and Conclusions of Law, the Commission finds that the following relief is appropriate, in the public interest, and necessary for the protection of investors:

IT IS ORDERED, pursuant to A.R.S. §§ 44-2032 and 44-1962, that Respondent BUCHANAN, and his agents, employees, successors and assigns, permanently cease and desist from violating the Securities Act. Respondent shall not sell any securities in or from Arizona without being registered in Arizona as dealers or salesmen, or exempt from such registration. Respondent shall not sell securities in or from Arizona unless the securities are registered in Arizona or exempt from registration. Respondent shall not transact business in Arizona as an investment adviser or investment adviser representative unless licensed in Arizona or exempt from licensure.

IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032 and A.R.S. § 44-1962, that Respondent BUCHANAN, individually, and the marital community of Respondent and Respondent Spouse shall pay restitution to the Commission in the amount of \$4,500,000.00. Payment shall be made in full within 60 days of the date of this Order. Any amount outstanding shall accrue interest at the rate of 10% per annum from the date of this Order until paid in full. Payment shall be made to the "State of Arizona" to be placed in an interest-bearing account controlled by the Commission. The Commission shall disburse the funds on a pro-rata basis to investors shown on the records of the Commission. Any restitution funds that the Commission cannot disburse because an investor refuses to accept such payment shall be disbursed on a pro-rata basis to the remaining investors shown on the records of the Commission. Any funds that the Commission determines it is unable to or cannot feasibly disburse shall be transferred to the general fund of the state of Arizona.

1 IT IS FURTHER ORDERED, pursuant to A.R.S. §§ 44-2036 and 44-1962, that
2 Respondent BUCHANAN, individually, and the marital community of Respondent and
3 Respondent Spouse shall pay administrative penalties in the amount of \$200,000.00. Payment
4 shall be made to the "State of Arizona." Any amount outstanding shall accrue interest at the rate
5 of 10% per annum from the date of this Order until paid in full. The payment obligations for these
6 administrative penalties shall be subordinate to any restitution obligations ordered herein and shall
7 become immediately due and payable only after restitution payments have been paid in full or
8 upon Respondents' default with respect to Respondents' restitution obligations.

9 IT IS FURTHER ORDERED that Respondent BUCHANAN's registration as a securities
10 salesman is revoked pursuant to A.R.S. § 44-1962.

11 IT IS FURTHER ORDERED that default shall render Respondents liable to the
12 Commission for costs of collection and interest at the maximum legal rate.

13 IT IS FURTHER ORDERED that acceptance of any partial or late payment by the
14 Commission is not a waiver of default by the Commission.

15 For purposes of this Order, a bankruptcy filing by any of the Respondents shall be an act of
16 default. If any Respondent does not comply with this Order, any outstanding balance may be
17 deemed in default and shall be immediately due and payable.

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1 IT IS FURTHER ORDERED, that if any Respondent fails to comply with this order, the
 2 Commission may bring further legal proceedings against that Respondent, including application to
 3 the superior court for an order of contempt.

4 IT IS FURTHER ORDERED that this Order shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION

6
 7  CHAIRMAN  COMMISSIONER
 8
 9
 10  COMMISSIONER  COMMISSIONER
 11

12 IN WITNESS WHEREOF, I, MICHAEL P. KEARNS,
 13 Interim Executive Director of the Arizona Corporation
 14 Commission, have hereunto set my hand and caused the
 15 official seal of the Commission to be affixed at the
 Capitol, in the City of Phoenix, this 23RD day of
FEBRUARY, 2009.

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 17 
 18 MICHAEL P. KEARNS
 19 INTERIM EXECUTIVE DIRECTOR

20
 21 _____
 22 DISSENT

23 _____
 24 DISSENT

25 This document is available in alternative formats by contacting Shaylin A. Bernal, ADA
 26 Coordinator, voice phone number 602-542-3931, e-mail sabernal@azcc.gov.
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